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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MORGAN, ROBERT W

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/275,887	Applicant(s) OFFUTT ET AL.	
	Examiner Robert W. Morgan	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-13,15-19,21-24,26-30 and 32-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-13,15-19,21-24,26-30 and 32-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. In the amendment filed 2/20/05, the following occurred: Claims 1, 10-12, 21-23, 32-34, 43-44 and 49-50 have been amended. Claims 1-2, 4-8, 10-13, 15-19, 21-24, 26-30 and 32-51 are presented examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 12-13, 15, 21, 23-24, 26, 35-36, 43-48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,732,398 to Tagawa in view of U.S. Patent No. 4,879,648 to Cochran et al., for substantially the same reasons given in the previous Office Action (dated 11/17/05). Further reasons appear below.

(A) Claims 2, 4, 13, 15, 24, 26, 35-36 and 45-48 have not been amended, and are rejected for the same reasons given in the previous Office Action (dated 11/17/05), and incorporated herein. Further reasons appear hereinbelow.

(B) Claims 1, 12, 21, 23, 43-44 and 50 have been amended to now recite the step of "...a user specifying a travel itinerary that includes a selected originating location and a selected destination location" and "...analyzing the travel itinerary specified in the request including the selected originating and destination locations, to determine a set of alternative itineraries different than the travel itinerary specified in the request".

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As per this limitation, Tagawa teaches at Fig. 3, that a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel, and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). In addition, Tagawa teaches at block 312, a user is instructed to press a HELP button that will cause a sub-routine to be activated to offer one or two choices that are different from the first recommended choice based on the predetermined priority system (see: column 13, lines 11-17). Furthermore, Tagawa teaches that after a user selects destination, the destination area selected may be further refined. For example, if the destination is Las Vegas, the system will query the user make a decision on three possible destination areas: along the Las Vegas Strip, downtown Las Vegas, or properties off the Strip (see: column 16, lines 55-60). This clearly indicates that a user specifies an origin and destination and is later shown one or two choices different from the first choice.

The other changes are merely grammatical, but otherwise do not affect the scope and breath of the claim as originally presented and/or in the manner in which the Examiner when applying prior art with the previous Office Action interpreted the claims. As such, the recited claims features of claims 1, 12, 21, 23, 43-44 and 50 are rejected for the same reasons given in the prior Office Action, and incorporated herein.

5. Claims 5-8, 16-19, 27-30, 49 and 51 are rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent No. 5,732,398 to Tagawa in view of U.S. Patent No. 4,879,648 to Cochran et al. as applied to claim 1, further in view of U.S. Patent No. 5,948,040 to DeLorme et al., for the same reasons given in the previous Office Action (dated 11/17/05). Further reasons appear below.

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6. Claims 11, 22, 33-34 and 37-42 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. U.S. Patent No. 5,732,398 to Tagawa in view of Walker et al. in U.S. Patent Number 5,897,620, for substantially the same reasons given in the previous Office Action (dated 11/17/05). Further reasons appear below.

(A) Claims 37-42 have not been amended, and are rejected for the same reasons given in the previous Office Action (dated 11/17/05), and incorporated herein. Further reasons appear hereinbelow.

(B) Claims 11, 22 and 33-34 have been amended to now recite the step of "...a user specifying a travel itinerary that includes a selected originating location and a selected destination location" and "...analyzing the travel itinerary specified in the request including the selected originating and destination locations, to determine a set of alternative itineraries different than the travel itinerary specified in the request".

As per this limitation, Tagawa teaches at Fig. 3, that a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel, and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). In addition, Tagawa teaches at block 312, a user is instructed to press a HELP button that will cause a sub-routine to be activated to offer one or two choices that are different from the first recommended choice based on the predetermined priority system (see: column 13, lines 11-17). Furthermore, Tagawa teaches that after a user selects destination, the destination area selected may be further refined. For example, if the destination is Las Vegas, the system will query the user make a decision on three possible destination areas: along the Las Vegas Strip, downtown Las Vegas, or properties off the Strip (see: column 16,

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lines 55-60). This clearly indicates that a user specifies an origin and destination and is later shown one or two choices different from the first choice.

The other changes are merely grammatical, but otherwise do not affect the scope and breath of the claim as originally presented and/or in the manner in which the Examiner when applying prior art with the previous Office Action interpreted the claims. As such, the recited claims features of claims 11, 22 and 33-34 are rejected for the same reasons given in the prior Office Action, and incorporated herein.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 10 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,732,398 to Tagawa, for substantially the same reasons given in the previous Office Action (dated 11/17/05). Further reasons appear below.

(A) Claims 10 and 32 have been amended to now recite the step of "... a user specifying a travel itinerary that includes a selected originating location and a selected destination location" and "...analyzing the travel itinerary specified in the request including the selected originating and destination locations, to determine a set of alternative itineraries different than the travel itinerary specified in the request".

As per this limitation, Tagawa teaches at Fig. 3, that a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel,

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and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). In addition, Tagawa teaches at block 312, a user is instructed to press a HELP button that will cause a sub-routine to be activated to offer one or two choices that are different from the first recommended choice based on the predetermined priority system (see: column 13, lines 11-17). Furthermore, Tagawa teaches that after a user selects destination, the destination area selected may be further refined. For example, if the destination is Las Vegas, the system will query the user make a decision on three possible destination areas: along the Las Vegas Strip, downtown Las Vegas, or properties off the Strip (see: column 16, lines 55-60). This clearly indicates that a user specifies an origin and destination and is later shown one or two choices different from the first choice.

The other changes are merely grammatical, but otherwise do not affect the scope and breath of the claim as originally presented and/or in the manner in which the Examiner when applying prior art with the previous Office Action interpreted the claims. As such, the recited claims features of claims 10 and 32 are rejected for the same reasons given in the prior Office Action, and incorporated herein.

Response to Arguments

7. Applicant's arguments filed 2/20/06 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 2/20/06.

(A) In the remarks Applicants argue in substance that, (1) Tagawa does not teach or suggest analyzing a travel itinerary, including a selected originating location or destination location, to determine a set of alternative itineraries different than the travel itinerary; (2)

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Tagawa nor the Cochran patent taken individually or in combination, teach or suggest receiving or providing a request including proximity tolerance specifying a user's acceptable range for alternative itineraries, or identifying an alternative itinerary that includes an alternative origination or destination location within the proximity tolerances; (3) Cochran patent does not disclose that the areas of interest are alternative hotels/resorts or otherwise correspond to alternative itineraries; (4) Applicant question whether the Cochran system is considered analogous art to the claimed invention according to MPEP 2141.01(a); (5) Neither Tagawa nor the Walker patent taken individually or in combination, teach or suggest reconfiguring the values of the travel itinerary and the alternative itineraries based upon the responses from the service providers as recited in claims 11, 22, 33 and 34; (6) Walker does not teach or suggest determining values for a requested itinerary and alternative itineraries and sending the price-to-beat request based upon the values; (7) Walker does not teach or suggest receiving responses from the service providers including a service provider itinerary and an associated value, where the service provider itinerary may be the same, or comparable, to the requested itinerary or an alternative itinerary; (8) Walker does not teach or suggest that the traveler determines the price the traveler is willing to pay for ticket based upon a value associated with a requested itinerary and values associated with alternative itinerary; and (9) Tagawa and Walker patents cannot be properly combined according to MPEP 2143.03 because the proposed modification of the prior art cannot render the prior art unsatisfactory for its intended purpose.

(B) In response to Applicant's arguments that, (1) Tagawa does not teach or suggest analyzing a travel itinerary, including a selected originating location or destination location, to determine a set of alternative itineraries different than the travel itinerary. The Examiner

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respectfully submits that Tagawa teaches at Fig. 3, that a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel, and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). In addition, Tagawa teaches at block 312, a user is instructed to press a HELP button that will cause a sub-routine to be activated to offer one or two choices that are different from the first recommended choice based on the predetermined priority system (see: column 13, lines 11-17). Furthermore, Tagawa teaches that after a user selects destination, the destination area selected may be further refined. For example, if the destination is Las Vegas, the system will query the user make a decision on three possible destination areas: along the Las Vegas Strip, downtown Las Vegas, or properties off the Strip (see: column 16, lines 55-60). This clearly indicates that a user specifies an origin and destination and is later shown one or two choices different from the first choice.

(C) In response to Applicant's arguments that, (2) Tagawa nor the Cochran patent taken individually or in combination, teach or suggest receiving or providing a request including proximity tolerance specifying a user's acceptable range for alternative itineraries, or identifying an alternative itinerary that includes an alternative origination or destination location within the proximity tolerances and (3) Cochran patent does not disclose that the areas of interest are alternative hotels/resorts or otherwise correspond to alternative itineraries. The Examiner respectfully submits that Tagawa is relied for teaching a requesting at Fig. 3, where a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel, and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). Cochran et al. is relied on

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for teachings proximity tolerance such as in one particular embodiment, a structured database of hotel and resort information records are searched and records are selected using any of the following qualifiers or selected search terms: proximity to another location, e.g. larger city, number of accommodations available; proximity to specific area of interest such as a tourist attractions, business location or airports (see: column 5, lines 63 to column 6, lines 7). Cochran et al. further teaches that the selected search terms for searching through the structured database include a search method that displays "IF APT. CODE THEN" section including parameter for the user to determine the appropriate distance to search from a particular hotel, tourist attractions, business location or airports (see: Fig. 4).

(D) In response to Applicant's arguments that, (4) Applicant question whether the Cochran system is considered analogous art to the claimed invention according to MPEP 2141.01(a). The Examiner respectfully submits it has been held that a prior art reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, although Cochran is not in the travel itinerary field, it is clearly pertinent to the problem of proximity tolerances specifying a user's acceptable distance range (see: Cochran column 5, lines 63 to column 6, lines 7 and Fig. 4). The Examiner considers searching a database of hotel and resort information using qualifiers or selected search terms such as proximity to another location, proximity to specific area of interest and also using selected search terms to determine the appropriate distance to search from a particular hotel, tourist attractions,

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business location or airports (see: Fig. 4) meets the requirements for MPEP 2141.01(a). As such, it is respectfully submitted that Cochran is clearly analogous art.

(E) In response to Applicant's arguments that, (5) Neither Tagawa nor the Walker patent taken individually or in combination, teach or suggest reconfiguring the values of the travel itinerary and the alternative itineraries based upon the responses from the service providers as recited in claims 11, 22, 33 and 34. The Examiner respectfully submits that Tagawa is relied for teaching an interactive travel service system that includes a user pressing a button for local or intrastate tour packages (216, Fig. 3) using a CPU (78, Fig. 3) that activates a routine illustrated in Fig. 7A-7C (see: column 14, lines 16-18). For example, in the Hawaii market (original location), a list of major tour packages (400, 402, Fig. 7a) is between the islands of Oahu, Kauai, Maui, Molokai, Lanai and Hawaii (the Big Island) (destination location and alternative destination) (see: column 14, lines 18-24). In addition, Tagawa teaches at Fig. 3, a user is asked for an airline preference, as well as to input flight segment data, including origin, destination, date of travel, and time of date of travel for departure and once answered a flight schedule with prices will be displayed (see: column 15, lines 25-50). Walker is relied on for teaching at least one price-to-beat request such as a method and apparatus for the sale of flight tickets where the user submits a bid to purchase an unspecified-time ticket for a specific itinerary, and that the traveler is willing to pay \$375 for the ticket (see column 6, lines 45-51). That is, a price-to-beat request is sent to a selected service provider with a value associated with the determined value for the travel itinerary. Further, Walker discloses that the reservation system, after determining that the traveler may be supplied with a ticket conforming to their time and value constraints, prints a ticket for the actual flight with the actual flight number and the departure/arrival times.

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The airline then transmits the ticket to the traveler (see column 15, lines 3-17). In this fashion, the traveler receives a response from the service provider with information and a value on a travel itinerary.

(F) In response to Applicant's arguments that, (6) Walker does not teach or suggest determining values for a requested itinerary and alternative itineraries and sending the price-to-beat request based upon the values; (7) Walker does not teach or suggest receiving responses from the service providers including a service provider itinerary and an associated value, where the service provider itinerary may be the same, or comparable, to the requested itinerary or an alternative itinerary and 8) Walker does not teach or suggest that the traveler determines the price the traveler is willing to pay for ticket based upon a value associated with a requested itinerary and values associated with alternative itinerary. The Examiner respectfully submit that Walker teaches a method and apparatus for the sale of flight tickets where the user submits a bid to purchase an unspecified-time ticket for a specific itinerary, and that the traveler is willing to pay \$375 for the ticket (see: column 6, lines 45-51). That is, a price-to-beat request is sent to a selected service provider with a value associated with the determined value for the travel itinerary. Further, Walker discloses that the reservation system, after determining that the traveler may be supplied with a ticket conforming to their time and value constraints, prints a ticket for the actual flight with the actual flight number and the departure/arrival times. The airline then transmits the ticket to the traveler (see: column 15, lines 3-17). This clearly shows that a traveler determines the date and price for a ticket, and this request is submitted to participating airlines according to restriction set forth by the traveler. Once a participating airline accepts the request by the traveler a ticket is transmitted to the traveler.

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(G) In response to Applicant's arguments that, (9) Tagawa and Walker patents cannot be properly combined according to MPEP 2143.03 because the proposed modification of the prior art cannot render the prior art unsatisfactory for its intended purpose. The Examiner respectfully submits Walker teaches a method and apparatus for the sale of flight tickets where the user submits a bid to purchase an unspecified-time ticket for a specific itinerary, and that the traveler is willing to pay \$375 for the ticket (see column 6, lines 45-51). That is, a price-to-beat request is sent to a selected service provider with a value associated with the determined value for the travel itinerary. Further, Walker discloses that the reservation system, after determining that the traveler may be supplied with a ticket conforming to their time and value constraints, prints a ticket for the actual flight with the actual flight number and the departure/arrival times. The airline then transmits the ticket to the traveler (see column 15, lines 3-17). In this fashion, the traveler receives a response from the service provider with information and a value on a travel itinerary. Furthermore, section 2143.01 of the MPEP also states "Although statements limiting the function or capability of a prior art device require fair consideration, simplicity of the prior art is rarely a characteristic that weighs against obviousness of a more complicated device with added function." *In re Dance*, 160 F.3d 1339, 1344, 48 USPQ2d 1635, 1638 (Fed. Cir. 1998) (Court held that claimed catheter for removing obstruction in blood vessels would have been obvious in view of a first reference which taught all of the claimed elements except for a "means for recovering fluid and debris" in combination with a second reference describing a catheter including that means. The court agreed that the first reference, which stressed simplicity of structure and taught emulsification of the debris, did not teach away from the addition of a channel for the recovery of the debris.). Therefore, the system of Walker teaching user/buyer

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pricing is only one embodiment of the reservation system and transmitting a ticket to the traveler clearly is representation of receiving a response from a service provider with information on the service providers travel itinerary as recited in claims 11, 22, 33 and 34.

In addition, the Examiner recognizes obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

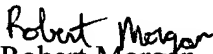
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (571) 272-6773.

The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert Morgan
Patent Examiner
Art Unit 3626


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER